

Contractors State License Board's Disclosure Policies

Over the past year, the Board has conducted a number of public hearings across the state. In addition, to attending the hearings, contractors, industry representatives, consumers and other people interested in the Board's disclosure policy have participated by letter and e-mail.

Five main topics emerged:

Disclosure of Complaints

Disclosure of Judgments, Settlements and other information about a contractor's finances

Disclosure of General Liability Insurance Status

Disclosure of Positive Information

Miscellaneous ideas participants want the Board to consider

Disclosure of Complaints

Consumer Points of View

The main issue for consumers is increased disclosure of complaints. Right now, the CSLB discloses complaints *only* after they have been referred to legal action, i.e., for a formal citation or accusation. This policy prevents CSLB from disclosing complaints earlier.

When consumers call to check a contractor's record, they think they are getting accurate information. When the consumer finds, however, that the contractor with the purportedly "clear" license actually has numerous complaints, the consumer feels betrayed: "If I knew how many complaints had been filed against so and so, I never would have hired him."

What complaints do consumers want disclosed?

Disclose Pending Complaints

The majority of consumers were adamant that complaints should be disclosed well in advance of the Board's decision to take legal action. Consumers were particularly upset when they found that CSLB was preparing a disciplinary action but still listed the contractor as clear. These consumers checked CSLB's website to find the contractor was "clear." They hired the contractor. When the project began to go sour, they checked our site again. By then our website was disclosing a citation that would have alerted the consumer to check further, better protect themselves or even steer clear of this contractor.

Disclose "Resolved" Complaints

A number of consumers want us to disclose complaints even if they are ultimately "settled." These consumers complain of months of wrangling with the contractor to get action. Only after the Board gets involved, does the contractor take action. Consumers do not want the Board to brush aside these complaints as "settled." Just because the consumer's project is ultimately completed does not mean everything is all right. Staff admits that a contractor can go on for years accumulating these "resolved" complaints without warranting a citation.

Consumers argue that disclosure is particularly relevant to consumers who are left with liens filed by unpaid material suppliers and subcontractors. These contractors can stay ahead of disciplinary action for years by paying subcontractors and suppliers for work and material at the last minute for work performed months ago. The time between the date material suppliers and subcontractors provided goods and services and the date these potential lien holders are paid gradually lengthens. The scheme ultimately collapses, leaving the last group of homeowners with liens and incomplete work.

This was the situation with a contractor we'll call Dewey, Cheetum and Howe. Dewey avoided disciplinary action for years, completing work and paying at the last minute. Subcontractors and material suppliers who did not have the foresight to file liens lost out completely.

A victim of this contractor committed herself to getting the whole story on Dewey.¹ She gathered the names of all the homeowners in her area who had liens filed against them by unpaid subcontractors and suppliers or who sued Dewey in small claims or civil court. The homeowners got together to compare notes. Most of these consumers had checked with CSLB before hiring Dewey but were told Dewey was active and clear. These consumers were horrified that CSLB withheld information that would have helped them make a sensible decision.

Should Disclosure be Indiscriminate or Discretionary?

Consumers were on all sides of this topic. Most consumers wanted the Board to be careful not to tag contractors with unwarranted or frivolous complaints. But most consumers were convinced that if the Board provided sufficient information about the grounds of the complaint, the public could distinguish worthless complaints from important complaints. Other consumers wanted the Board to exercise its discretion. These consumers wanted to trust Board personnel to distinguish a frivolous complaint from a serious complaint.

Industry Points of View

For purposes of this review, industry representatives and licensees are grouped together as industry. With some exceptions, industry e-mail and letters indicate support for the present limited disclosure policy. In

¹ Board members may remember Julie Oback, the homeowner who addressed the Board at the September meeting.

response to the possibility of increased disclosure, industry raised various concerns:

- Fears that frivolous complaints will harm the reputation of competent contractors.
- Apprehension that competitors would use an expanded disclosure policy to ruin the reputation of competent contractors. (A return to the kill kits of yore.)
- Strong convictions that disclosing a complaint prior to investigation is unfair and a violation of due process. Good contractors may be ruined in the time it takes to separate good from bad contractors.
- Belief that complaints that are settled without legal action are not very serious anyway.

Industry would, however, support letting disciplinary actions drop off after a certain time period.

Building Officials

Building Officials were generally in favor of expanded complaint disclosure. CSLB staff heavily weighs the opinion of these officials. Building officials are often placed in the awkward situation of having to sign off on poor jobs that nonetheless meet building standards. Better than anyone, they know the danger to homeowners of contractors who do chronically poor work.

Other Interested Parties

Realtors and attorneys weighed in with mixed comments. Realtors wanted expanded disclosure. Attorneys were more concerned with verifying that disclosure is warranted.

Seeking a Solution

Consumers clearly want more information. The advent of the Internet has changed the way the Contractors State License Board disseminates information. Consumers who 4 years ago would not have known that there was a Contractors Board now use simple search tools to find and contact the Board. The Board's website allows consumers to immediately download information they would never have known existed before.

In addition to having better access to information, consumers have become increasingly sophisticated in their review of licensed contractors. At the same time, the Contractors State License Board has led the way among the consumer boards and bureaus in providing information about its licensee population.

Ironically, the ready availability of information may also mislead consumers. Access to the Internet has created the broad consumer expectation that up-to-date information can and should be readily available to California consumers. CSLB feeds this expectation by encouraging consumers to check a contractor's license status.

When the consumer finds the Board website (or calls the CSLB hotline) and sees that the contractor has an active and clear license, the consumer is lulled into the unwarranted assumption that the contractor is OK. When the consumer finds that the contractor with a "clear" license, in fact, has a lengthy complaint history, the consumer feels betrayed. This feeling of betrayal has escalated complaints about CSLB's disclosure policies. As a result of these complaints, the Board decided to review its disclosure policies and practices.

Increasing pressure on the Board to make some changes, the Joint Legislative Sunset Review Committee also expressed its expectation that the Board would recommend changes to the laws and regulations governing Board disclosure policies.

Contractors, on the other hand, focus their attention on ways that unwarranted disclosure can harm a competent contractor. The letters and e-mails from licensees and industry representatives are rife with fear, worry and anger about unwarranted disclosure.

Industry representatives and consumers who participated in the hearings, however, were considerably less adamant about their positions. You may recall the hearings were unusual. Instead of a traditional hearing where both sides state their own positions as strongly as possible, the Disclosure Hearings were aimed at problem solving. As each group had to find a way to deal with the other group's needs, their positions softened considerably. As a result, most participants left the hearings with a commitment to win through compromise.

The general feeling was to expand disclosure as much as possible but to develop disclosure policies that would not unfairly target a contractor.

Staff seeks direction:

- Does the Board want staff to explore full disclosure?
- Does the Board want to staff to explore expanded disclosure and prepare a proposed regulation that would both expand disclosure and still resist undue prejudice of contractors?
- Does the Board want to maintain the present complaint policy?

<p style="text-align: center;">Disclosure of Judgments, Settlements and Other Financial Information</p>
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Consumer Points of View

After consumers were themselves in litigation with their contractor, these consumers found that their contractor had been sued by other customers and ordered to pay for poor workmanship. These consumers believe the Board should:

- Collect and disclose information about contractors' judgments
- Collect and disclose information about settlements and arbitration awards
- Keep track of liens placed on consumer properties after the contractor failed to pay subcontractors, suppliers and laborers
- Create ways a consumer can check a contractor's general financial health, credit history

Consumers argue all this information is public and the Board should have a hand in gathering it and making it available to consumers.

Industry Point of View

Judgments

Industry argues that losing a judgment is not always an indication of wrongdoing. It can be a matter of poor representation or simply a roll of the dice.

Settlements

The case against disclosing settlements, industry claims, is even more persuasive. Some cases are settled not because of any wrongdoing, but because settlement would be less expensive than litigation. In fact, disclosing settlements, industry argues, would decrease settlements because the possibility of disclosure might be the factor that raised the stakes enough for the contractor to go ahead and litigate.

Arbitration awards

Industry also opposes disclosing arbitration awards. Arbitration is often chosen as a less expensive alternative to litigation. Arbitration is less expensive and more efficient because it relies on reduced discovery and

simplified evidence. Arbitration has very limited appeal rights. Thus, while arbitration produces an actual adjudicated decision, arbitration awards may still be less definitive a statement on the issue of wrongdoing. CSLB's arbitration program does not allow disclosure of an arbitration award unless the award is not paid.

Financial Health

Industry did not generally support having the Board develop ways to check a contractor's financial health. Industry rejected this approach as beyond the Board's jurisdiction.

Seeking a Solution

Certainly the kind of financial information consumers identify would be helpful to consumers hiring a contractor. Right now, the Board unevenly collects information about judgments, settlements and arbitration awards but does not disclose this type of information unless the contractor fails to pay the award.

Staff proposes to review this issue more thoroughly with an eye toward providing consumers with information about how they can research a contractor's finances, as opposed to CLSB taking on this task.

Staff seeks direction:

- Should the Board actually collect information about how to gather credit information and disclose it through the Board's website and call centers? How about information about judgments, settlements, arbitration awards?
- Should the Board create links to sites providing publicly available financial information available to consumers for a fee?
- Should the Board provide general information about what to look for in a financially healthy contractor and describe general ways a consumer can check out the contractor? For example, the Better Business Bureau, County Records of lien activity, etc.

General Liability Insurance

Background: Mandating Insurance

A robust discussion of Commercial General Liability Insurance occurred at each public hearing. Consumers, who did not know that CGL was even an issue, were horrified that they didn't know. It never occurred to them that a contractor could come to the house and not be insured. Once informed of their situation, consumers overwhelmingly supported mandating insurance. A majority of industry representatives and contractors also supported mandating insurance.²

You may recall that last year the Board opted not to support mandatory insurance until the Board could secure electronic transfer of insurance information from the insurance companies. Without electronic transfer, the Board could not keep its records on 260,000 plus licenses up to date. For their part, insurance companies opposed mandating insurance because they did not want to create a pool for uninsurable contractors.

The Board's alternative proposal to require all home improvement contractors to disclose whether they carry insurance was slipped into SB 2029. The Board will address the regulation implementing this proposal at the January Meeting.

Disclosing Insurance Status

Most participants were in favor of mandating disclosure. Please note, some participants were against disclosure but only because they favored mandating insurance. Disclosure appeared a half-measure for them.

A few contractors, most of whom appeared to carry insurance, did not want to disclose insurance status. These contractors did not want to highlight insurance for fear it would create litigation.

² Two years ago at a Roundtable discussion about GLI, contractors and insurance executives explained that contractors who maintain insurance do so primarily to protect *their own* assets, not to protect their customers. A contractor without insurance is signaling that he has no assets to protect. Contractors who pay for insurance also resented competing against contractors who do not carry insurance. On the other side, some contractors write that insurance should not be mandated until it is more widely affordable.

Seeking a Solution

SB 2029 already requires that home improvement contractors disclose whether they carry Commercial General Liability Insurance. Although SB 2029 covers only home improvement and not commercial contractors, a lack of insurance has not been a terrible problem on the commercial side. Commercial property owners who hire contractors are well aware of the role of insurance. Over the next year, we can determine if disclosure alone is sufficient.

Staff seeks direction:

- Should staff wait to see if the new requirements provide sufficient protection?
- Should staff affirmatively work on setting up electronic transfer with an eye toward mandating Commercial General Liability Insurance?

Disclosure of Positive Information

The response to the idea of disclosing positive information was lukewarm at best. Few consumers responded to this idea. Those that did thought it might be helpful to distinguish better contractors from ordinary contractors.

Contractors generally opposed, although members of respected trade organizations, like NARI, wanted that membership information disseminated.

At the hearings, all participants assumed that to initiate this kind of disclosure, the Board would need to evaluate the value of the certification, class or training, as well as to verify actual attendance. Participants were doubtful that the Board would agree to spend money to verify that the positive information was meaningful.

Seeking a Solution

Because of lukewarm support for the idea of disclosing positive information and because the information would be useless unless verified, staff will drop this idea in favor of other, more needed strategies for helping consumer weed out good from not as good contractors.

Staff seeks direction

- Review ways to create standards that would be used to verify positive information
- Drop this approach

Miscellaneous ideas participants want the Board to consider

The final category includes a variety of topics ranging from how the Board's website should be organized to the role of worker's compensation. These points are not categorized. A list of all the topics follows. Many had to do with complaints, insurance and financial disclosure. Ideas that are not addressed here will be addressed in our next report.

- Referrals from other government and quasi-government agencies (like energy providers) create the unwarranted impression that the agency has checked out the contractor and the contractor is OK. Other government and quasi-government agencies often provide funding for home energy and security projects. As a convenience to the customer, these agencies may provide a list of contractors who work in the area. These agencies have not checked out these licensees beyond the fact of licensure. The referral may create an illusion of competency.
- Can CSLB link with the State Compensation Insurance Fund to provide information on workers compensation fraud?
- Consumers, particularly homeowners, complain that they get information only after the damage is done.
- CSLB's consumer information is inadequate to identify potential problems.
- Many people don't even know the Board exists.
- Consumers can't track the progress (or lack of progress) of the complaint.
- Consumers contemplating home improvement projects don't know how to get information.
- Contractors' licenses should be graded. Contractors should be rated so consumers can spot good, better, best contractors. Board needs ways to identify good contractors.
- Consumers perceive bias on the part of the CSLB in favor of the contractor.

- Consumers are not aware that CSLB can help them.
- Consumers participate in private arbitration or enter into settlements before they contact CSLB. This reduces their options.
- Consumers sign claim releases before CSLB is involved.
- Consumers can't get through on CSLB phone lines.
- Contractor with previous disciplinary action should be identified even if he or she works for another company.

Disagreements with text on website

- Old Text

Before text on website was changed, consumers complained that the text was so uninformative and that it was hard to tell if the complaint should be taken seriously.

- New Text

The Board recently revised the text so that it makes it clear that a complaint has been referred for legal action and states that this involves a violation of law. Contractors are complaining that this goes too far.

- Text appears on website describing a contractor as being in danger of suspension because workers' comp has been cancelled. This statement is criticized as too speculative. Question to be answered is: what is the purpose of the workers comp blurb?
- Make public aware that the contractor is no longer covered by workers compensation?
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- Make public aware that this contractor is not in compliance with the law and will be suspended on a date certain if contractor does not take immediate action?
- Consumers, industry folks and county and/or city building inspectors want the website to include business telephone numbers.
- Should business telephone numbers be available on the website or only in response to an inquiry?

- Bond companies report that a significant number of complaints to them must be rejected because they refer to a time frame covered by a previous bond company.
- Contractors complain: Don't just send an inadequate form letter and rush to accusation.
- What about when there is a concurrent civil suit that is resolved but Accusation remains?
- Contractors want a copy of complaint sooner
- Contractors want early warning of accusation.
- Enforcement doesn't provide contractors with enough information about the complaint.
- When Board lists P.O. Box, can't get address to serve subpoena. Wants home address for service.
- Contractor wants to know if he can send own expert to view property in preparation for hearing --(same time as industry expert.)
- Complaint policy should connect to amount of work the contractor does.
- Distinguish technical violations from consumer harm.
- Date violations.
- Calls for more information should be better controlled. Differentiate between violations.
- Buyer must beware.
- Is there a way to learn what volume of work the contractor does?
- Why not pick a particular number of complaints. After that, disclosure.
- Why not seek trend or pattern of complaints.
- Surety wants expanded disclosure for surety as "party in interest."
- Check new licensees for complaints. Are new contractors more likely to harm consumers than veteran contractors?
- Put a lid on disclosure "time".

- Consumers should get more information about the contractor before hiring.
- How many complaints does the contractor have? This would help.
- Consumers want to know what the contractor's track record is on prompt completion.
- Distribute a survey form that contractor would provide to the homeowner. Homeowner would send it in. CSLB would compile.
- How about a single sheet introducing CSLB?
- Have consumer attorney design a contract form.
- Results of surveys to be published good or bad.
- Disclose only the complaints that went to Field investigation.
- Multiple complaints should not qualify for mediation.
- Tally types of complaints and disclose that.
- Why can't we target a contractor with multiple complaints?
- Building inspectors should provide info about contractors. (to the CSLB only).
- Consumer want to know how many jobs the contractor is working on (monthly).
- Too hard to revoke Contractor's License.
- Contractor should provide information upfront about employee's and subcontractors working on projects.

Los Angeles Meeting Addressed Complaints

- Disclose all complaints filed with details – Nature of complaint plus disposition.
- Find a middle way.
- On 800# or internet advise public of complaints.

- Consumer should be told to check for civil judgments, BBB, trade assoc. (give 3 referrals of good contractors.)
- Early disclosure of verifiable complaints would give contractor incentive to fix the problems.
- Legal actions should not remain on record forever
- Distinguish between technical and serious problems.
- Need to advertise that there is a CSLB more often.

Judgments

- Take disciplinary action for failure of licensee to inform CSLB of judgment within 90 days.
- Disclose if there is a history of judgments.
- Law should require that all judgments be recorded at CSLB and released to public.
- Get courts to tell us about Construction-Related judgments.
- Complaint may be lodged by a competitor which could be false – May inhibit contractor's ability to perform.
- Complaints/actions stay on the system too long.
- No differentiation made between "paper" violations and construction/fraud/"rip offs."
- No consideration given for number of projects built vs. number of complaints filed.
- Disclose any complaints within the last few years.
- Disclose open complaints & find a filtering or trigger so that when there is financial harm, the complaints are disclosed.

Disclose:

- # of complaint after 1 free complaint..
- type of violation
- Volume of Business Disclaimer on #'s.

- No disclosure of all civil judgments.

- In some cases staff would like to disclose info. Not allowed; e.g. pattern of recent complaints that have not yet reached legal action status.

- Complied citations stay on record forever. A complied citation over 15 years ago could lose business for a good contractor today.

- Consumers are upset that there is a limit to info. they can get. They request third party info. about all potential witnesses.

- Consumers are annoyed that we can only record unsatisfied judgments.

- Consumers expect us to have liability insurance information.

- Some staff members feel the Board should disclose criminal history of contractors. Consumers network and discover we had numerous complaints against their contractor and did not disclose.

- Frustrated consumers become more frustrated in trying to learn our process. If they don't ask the right questions, they don't get answers; e.g. bond payments of claim.

- Some consumers ignore the info. we can disclose because they have a good price.

- Educate consumers of places they can go to research court judgments. (i.e. website, local court records.)

- Include (expunge record after 10 yrs.) the date of citation and definition of codes on system. Should have a way to "hint" that patterns of complaint are happening.

- Link court records to CSLB records re: judgment.

- Require proof of liability insurance & recommended minimum \$ amount.
- Allow contractor to explain how can contractor defend a complaint?
- Problem: Multiple complaints; disclosure too late
- Multiple <2 or 3 in succession
- Need pattern
- Citation cut off – OK for citation if nature/date.
- Classifications should be described.
- Classification can be misleading. Not all “roofs” are equal.
- GLI – require certificate of insurance to make sure contractor is insured. (NARI) [problem without of country or fly by night insurance].
- GLI – get consumer named as additional insured.
- Inform consumers about limits of GLI.
- Positive information – NARI – too easily fudged.
- Cruz sneaks solution in not link to NARI.
- Complaints not disclosed.
- Cases take too long to get resolved (if sooner, more disclosure)
- Pending actions are kept open too long.
- Insurance disclosed or mandated – expiration date.
- Information delivery (2 calls plus) to get accusation/citation info is too onerous.
- Inadequate disclosure of how consumer can protect.
- Old System – disclosed when probable violation.

- Disclosing pending complaints could ruin good contractors rep.
- Consumers can blackmail. Simple disclosure of all complaints is too much.
- Public wants all complaints.
- Industry is served by broad disclosure, maybe even all disclosure.
- Don't disclose – use better enforcement.

Complaints

- Trigger should be dimensional.
- Can't know how big business is
- Disclose complaints in Tiers
 - Legal Actions
 - Probable Cause
 - Complaint pending (investigated)
 - Complaint received.
- Redefine complaints as “feedback” or some other non-judgmental description
- Complaint Approach
 - Disclose multiples and Investigate more promptly.
 - Disclosure should be case by case.
 - Assess pattern of behavior.
 - Notify contractor
 - Disclose